

Case 2:10-ap-02945-BR Doc 10-2 Filed 01/25/11 Entered 01/25/11 16:58:36 Desc

Case 2:10-ap-02945-BR First Amended Complaint Doc 7 Filed 01/11/11 Entered 01/11/11 15:59:00 Desc  
Main Document Page 1 of 44

1 Richard M. Pachulski (CA Bar No. 90073)  
2 Dean A. Ziehl (CA Bar No. 84529)  
3 Alan J. Kornfeld (CA Bar No. 130063)  
4 Gillian N. Brown (CA Bar No. 205132)  
5 PACHULSKI STANG ZIEHL & JONES LLP  
6 10100 Santa Monica Blvd., 11th Floor  
7 Los Angeles, California 90067-4100  
8 Telephone: 310/277-6910  
9 Facsimile: 310/201-0760  
10 E-mail: rpachulski@pszjlaw.com  
11 dziehl@pszjlaw.com  
12 gbrown@pszjlaw.com

13 Special Counsel for Bradley D. Sharp, Chapter 11  
14 Trustee for Estate of Namco Capital Group, Inc.

15 UNITED STATES BANKRUPTCY COURT  
16 CENTRAL DISTRICT OF CALIFORNIA  
17 LOS ANGELES DIVISION

18 In re:

19 NAMCO CAPITAL GROUP, INC., a California  
20 corporation,

21 Debtor.

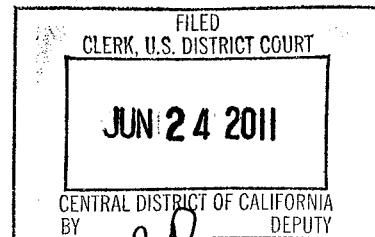
22 BRADLEY D. SHARP, solely in his capacity as  
23 Chapter 11 Trustee of NAMCO CAPITAL GROUP,  
24 INC.,

25 Plaintiff,

26 vs.

27 MOUSA NAMVAR, HOOSHANG NAMVAR,  
28 HOMAYOUN NAMVAR, RAMIN NAMVAR,  
HELEN SHADI, HILDA BAYANFAR, LIDA  
SHRAGA, NATALY NAMVAR, DANIEL  
NAMVAR, BENJAMIN NAMVAR, MALKA  
NAMVAR, SHIRAH NAMVAR, TRIFISH, LLC,  
TRIBUN, LLC, MAGDIEL, LLC, TRISISTER,  
LLC, BELIEVERS, LLC, NET, LLC, LIGHT  
SOURCE, LLC, LA HOTEL VENTURE, LLC,  
LANCAM PROPERTIES, LLC, LACY 20, LLC,  
NAM 5, LTD., NAMCO 8 LLC, WISHLAB 90,  
LLC, BUNHERST, LLC, DGADE OF  
DELAWARE, LLC, TOYRAM, LLC, NAMARI,  
LLC, WOODMAN PARTNERS, LLC,  
TRITOWNE, LLC, TRIGROVE, LLC and HARON  
SHABATIAN,

Defendants.



CV11 05320 GAF

Case No.: 2:08-bk-32333-BR

Chapter 11

FIRST AMENDED COMPLAINT FOR  
DAMAGES, EQUITABLE  
SUBORDINATION, DECLARATORY  
AND INJUNCTIVE RELIEF;  
OBJECTION TO CLAIMS

Adv. Proc. No. 2:10-ap-02945

### **Nature of the Action**

1. Creditors entrusted hundreds of millions of dollars to Namco Capital Group, Inc. (“Namco”) expecting that it would be invested prudently, in a manner consistent with Namco’s promise of regular interest payments at a healthy but unspectacular rate. Instead, Ezri Namvar (“Ezri”) and his brothers, Mousa Namvar (“Mousa”), Hooshang Namvar (“Sean”), Homayoun Namvar (“Tony”) and Ramin Namvar (“Ramin” and, collectively, the “Namvar Brothers”) used the money as a family piggy bank. The Namvar Brothers would use money held by Namco to purchase millions of dollars of stock for family members, to fund their own personal real estate development ventures, or for personal non-business purposes, such as a \$200,000 wedding party for Ramin. The primary beneficiaries of this largesse were the Namvar Brothers, their sisters, Helen Shadi (“Helen”), Hilda Bayanfar (“Hilda”) and Lida Shraga (“Lida”), their spouses and their children. (The family members named as defendants herein are referenced collectively as the “Namvar Defendants”).

2. The largest destination for investor funds was real estate projects that the Namvar Brothers acquired and/or developed with Namco money, but placed in family-owned limited liability companies ("LLCs"). The Namvar Brothers used Namco as an unrestricted source of capital to purchase property of every kind, size and description: hotels, rural residential development property, agricultural property with no entitlements, an equestrian center, pistachio farms, shopping centers, land for commercial development, a trailer park, storage facilities, small apartment properties, small strip centers in marginal areas, single family residences, conference center sites, property to be developed into golf courses, ground leases, medical office buildings, and government-assisted housing projects. Often they were acquired with little or no due diligence and reckless disregard for the economic viability of the project.

3. Typically, the Namvar Brothers would pick a property and have Namco provide the equity funding, without any security or any written agreement beyond a journal entry. Then they would form one or more LLCs to hold title and would distribute LLC ownership interests directly and indirectly to various combinations of Namvar family members. The LLCs were uncapitalized; thus unless there was third party financing, Namco would continue to fund the project. Because

1 there was typically no written agreement with Namco, the Namvar Brothers exercised broad  
 2 flexibility to manage the funds in whatever manner suited their interests. If an investment could be  
 3 refinanced or sold at a gain, they might use the free cash to repay Namco with interest, or they might  
 4 decide to roll the profits into a new project through section 1031 exchanges (thereby creating a false  
 5 impression that they were contributing their own capital in the successor investments). Millions of  
 6 dollars were transferred back and forth among these LLC's and Namvar Defendants via entries in  
 7 Namco's general journal. One thing was certain: If the project was unsuccessful, Namco took the  
 8 loss. In this way, Namco funds were systematically diverted and managed for the benefit of family  
 9 members, at the expense of Namco's creditors.

10 4. Hundreds of LLCs were created in this way and for this purpose – most without even  
 11 a pretense of independent or adequate capitalization. This essential element of any LLC operating  
 12 agreement – who contributed how much capital for what ownership percentage – was routinely  
 13 ignored because nobody was contributing anything except their signature. Instead – under the  
 14 heading "Capital Contributions" – the operating agreements would typically assign ownership  
 15 percentages to family members without requiring any capital contributions. Often, more than one of  
 16 these zombie LLCs would be placed sequentially in the chain of ownership, for no apparent purpose  
 17 other than perhaps to obfuscate title or give the appearance of limited liability. Ownership interests  
 18 were redistributed or transferred for no purpose related to the project. Although the capital and the  
 19 risk was Namco's, virtually all of the LLC ownership interests were held beneficially by family  
 20 members who risked nothing.

21 5. By 2008, the total amount of Namco funds invested and owing to its creditors  
 22 exceeded \$600 million. With their intrinsically fraudulent manner of operating, the Namvar  
 23 Brothers fed Namco sufficient cash to pay a return to its creditors (while generating large gains for  
 24 family members). When the real estate market turned, however, this "business model" quickly  
 25 collapsed, leaving behind hundreds of millions of dollars in unpaid debts, a slew of foreclosures, an  
 26 FDIC takeover of the family-controlled bank, and a gigantic mess of accounting and title issues.

27 6. Ezri and Tony were officers of Namco. It is beyond question that their mishandling  
 28 of funds invested in Namco breached Ezri's and Tony's fiduciary duties, and that the other Namvar

1 Brothers knowingly and intentionally encouraged, assisted, participated in and enabled these  
 2 breaches of fiduciary duty. The Court should deal harshly with these fiduciary abuses and impose  
 3 punitive damages in addition to the compensatory damages suffered by Namco as a result of their  
 4 misconduct.

5       7. This lawsuit also seeks repayment from the Namvar Defendants of the transfers of  
 6 Namco funds made to or for their benefit and booked by Namco to their accounts. Substantially all  
 7 of these transfers were made to the LLCs named as defendants herein (the “LLC Defendants”).  
 8 Many of the LLC Defendants are defunct, no surprise since they were never capitalized. The  
 9 Namvar Defendants are members of the LLC Defendants, as specified herein, and should not be  
 10 entitled to assert the separate existence of sham LLCs to shield themselves from joint and several  
 11 liability as joint venturers. The Namvar Brothers created hundreds of LLCs as empty shells, with no  
 12 independent capitalization or ability to honor their obligations, meaningless except as legal vehicles  
 13 to hold title (for Namvar family members) and as conduits for the use of Namco funds, which were  
 14 shuffled back and forth. This abuse of the corporate form precludes the Namvar Defendants from  
 15 interposing the LLC Defendants as a shield to liability; rather, on such facts, the law treats the  
 16 relationship of the Namvar Defendants to creditors and between themselves as that of joint  
 17 venturers, with joint and several responsibility for the debts of the LLC Defendants.

18       8. This lawsuit also seeks the avoidance of several transfers of Namco property to or for  
 19 the benefit of the Namvar Brothers. Certain transfers described herein were made with the intent to  
 20 hinder or delay creditors, and/or while insolvent and for less than reasonably equivalent value, and  
 21 so are avoidable as actual and constructively fraudulent transfers. Certain other transfers were  
 22 preferential and were made to insider Defendants within one year of the Petition Date.

23       9. Among the hundreds of millions of dollars of creditor losses are the life savings of  
 24 many families. This lawsuit seeks to mitigate the creditors’ losses by seeking recovery from some of  
 25 the primary perpetrators of this tragedy.

## **Jurisdiction and Venue**

10. On December 22, 2008 (the "Petition Date"), involuntary chapter 11 bankruptcy petitions were filed against Ezri and Namco. On January 29, 2009, orders for relief were entered in both bankruptcy cases.

11. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334(a). This is a core proceeding pursuant to 28 U.S.C. § 157.

12. Venue in this district is proper pursuant to 28 U.S.C. § 1409(a).

## **The Parties**

13. Plaintiff, Bradley D. Sharp ("Plaintiff"), was appointed as the chapter 11 trustee of Namco on May 8, 2009.

14. Plaintiff is informed and believes, and thereon alleges, that defendant Mousa Namvar is an individual and at all times material to this Complaint was a resident of the County of Los Angeles, California. Mousa is one of Ezri's brothers.

15. Plaintiff is informed and believes, and thereon alleges, that defendant Ramin Namvar is an individual and at all times material to this Complaint was a resident of the County of Los Angeles, California. Ramin is one of Ezri's brothers.

16. Plaintiff is informed and believes, and thereon alleges, that defendant Homayoun Namvar is an individual and at all times material to this Complaint was a resident of the County of Los Angeles, California. Tony is one of Ezri's brothers. At all times material to this Complaint, Tony was an officer of Namco.

17. Plaintiff is informed and believes, and thereon alleges, that defendant Hooshang Namvar is an individual and at all times material to this Complaint was a resident of the County of Los Angeles, California. Sean is one of Ezri's brothers.

18. Plaintiff is informed and believes, and thereon alleges, that defendant Lida Shraga is an individual and at all times material to this Complaint was a resident of the County of Los Angeles, California. Lida is one of Ezri's sisters.

1       19. Plaintiff is informed and believes, and thereon alleges, that defendant Helen Shadi is  
2 an individual and at all times material to this Complaint was a resident of the County of Los  
3 Angeles, California. Helen is one of Ezri's sisters.

4       20. Plaintiff is informed and believes, and thereon alleges, that defendant Hilda Bayanfar  
5 is an individual and at all times material to this Complaint was a resident of the County of Los  
6 Angeles, California. Hilda is one of Ezri's sisters.

7       21. Plaintiff is informed and believes, and thereon alleges, that defendant Nataly Namvar  
8 ("Nataly") is an individual and at all times material to this Complaint was a resident of the County of  
9 Los Angeles, California. Nataly is the wife of Sean.

10       22. Plaintiff is informed and believes, and thereon alleges, that defendant Daniel Namvar  
11 ("Daniel") is an individual and at all times material to this Complaint was a resident of the County of  
12 Los Angeles, California. Daniel is one of Ezri's children.

13       23. Plaintiff is informed and believes, and thereon alleges, that defendant Benjamin  
14 Namvar ("Benjamin") is an individual and at all times material to this Complaint was a resident of  
15 the County of Los Angeles, California. Benjamin is one of Ezri's children.

16       24. Plaintiff is informed and believes, and thereon alleges, that defendant Malka Namvar  
17 ("Malka") is an individual and at all times material to this Complaint was a resident of the County of  
18 Los Angeles, California. Malka is one of Ezri's children.

19       25. Plaintiff is informed and believes, and thereon alleges, that defendant Shirah Namvar  
20 ("Shirah") is an individual and at all times material to this Complaint was a resident of the County of  
21 Los Angeles, California. Shirah is one of Ezri's children.

22       26. Plaintiff is informed and believes, and thereon alleges, that defendant Trifish, LLC  
23 ("Trifish") is a limited liability company organized under the laws of the State of California which,  
24 at all times relevant hereto, was wholly owned by Sean, Tony and Ramin.

25       27. Plaintiff is informed and believes, and thereon alleges, that defendant Tribun, LLC,  
26 ("Tribun"), is a limited liability company organized under the laws of the State of Delaware which,  
27 at all times relevant hereto, was 99% owned by Trifish and 1% by Parnas Financial LLC..

1       28. Plaintiff is informed and believes, and thereon alleges, that defendant Magdiel, LLC  
2 ("Magdiel") is a limited liability company organized under the laws of the State of California which,  
3 at all times relevant hereto, was wholly owned by Mousa.

4       29. Plaintiff is informed and believes, and thereon alleges, that defendant Trisister, LLC  
5 ("Trisister") is a limited liability company organized under the laws of the State of California which,  
6 at all times relevant hereto, was wholly owned in equal parts by Lida, Helen and Hilda.

7       30. Plaintiff is informed and believes, and thereon alleges, that defendant Believers, LLC  
8 ("Believers") is a limited liability company organized under the laws of the State of California,  
9 interests in which were originally owned 100% by Sean, later owned 99% by Sean and 1% by  
10 Nataly, and ultimately reallocated 40% to Sean and 60% to Nataly.

11       31. Plaintiff is informed and believes, and thereon alleges, that defendant Net, LLC  
12 ("Net"), is a limited liability company organized under the laws of the State of California which, at  
13 all times relevant hereto, was wholly owned by Ramin.

14       32. Plaintiff is informed and believes, and thereon alleges, that defendant Light Source,  
15 LLC ("Light Source") is a limited liability company organized under the laws of the State of  
16 California which, at all times relevant hereto, was wholly owned by Tony.

17       33. Plaintiff is informed and believes, and thereon alleges, that defendant Nam 5, Ltd.  
18 ("Nam 5"), is a limited partnership which, at all times relevant hereto, was owned in equal 20%  
19 interests by Ezri, Tony, Sean, Mousa and Ramin.

20       34. Plaintiff is informed and believes, and thereon alleges, that defendant LA Hotel  
21 Venture, LLC ("LA Hotel Venture"), is and, at all times material to this Complaint, was a limited  
22 liability company organized under the laws of the State of California, which, at all times relevant  
23 hereto, was owned by Toyram, LLC.

24       35. Plaintiff is informed and believes, and thereon alleges, that defendant Toyram, LLC  
25 ("Toyram") is and, at all times material to this Complaint, was a limited liability company organized  
26 under the laws of the State of California, which, at all times relevant hereto, was owned by Namari,  
27 LLC.

1       36. Plaintiff is informed and believes, and thereon alleges, that defendant Namari, LLC  
 2       ("Namari") is and, at all times material to this Complaint, was a limited liability company organized  
 3       under the laws of the State of California, which, at all times relevant hereto, was owned by 14% by  
 4       Magdiel, 9% by Trifish, 33.33% by Light Source, 33.33% by Net, 3% by Trisister, 64% by Ezri and  
 5       10% by The Safi Trust.

6       37. Plaintiff is informed and believes, and thereon alleges, that defendant Lancam  
 7       Properties, LLC ("Lancam Properties"), is a limited liability company organized under the laws of  
 8       the State of California which, at all times relevant hereto, was wholly owned by Lacy 20, LLC.

9       38. Plaintiff is informed and believes, and thereon alleges, that defendant Lacy 20, LLC  
 10       ("Lacy 20"), is and, at all times material to this Complaint, was a limited liability company  
 11       organized under the laws of the State of California, which, at all times relevant hereto, was owned by  
 12       (a) the Namvar Family Trust (a self-settled revocable trust for Ezri's children, Daniel, Malka and  
 13       Shirah) (20%); (b) Mousa Namvar (9%); (c) Daniel Namvar (7%); (d) Malka Namvar (7%); (e)  
 14       Shirah Namvar (7%) and (f) Woodman Partners, LLC (50%).

15       39. Plaintiff is informed and believes, and thereon alleges, that defendant Woodman  
 16       Partners LLC ("Woodman Partners"), is and, at all times material to this Complaint, was a limited  
 17       liability company organized under the laws of the State of California, which, at all times relevant  
 18       hereto, was owned by: (a) Sean (18%); (b) Tony (18%); (c) Ramin (18%); (d) Helen Shadi (5%); (e)  
 19       Daniel Namvar (6%); (f) Malka Namvar (6%); (g) Shirah Namvar (6%); (h) Mousa (18%) (i) Hilda  
 20       Bayanfar (2.5%); and (j) Lida Shrager (2.5%).

21       40. Plaintiff is informed and believes, and thereon alleges, that defendant DGADE of  
 22       Delaware, LLC ("DGADE"), is and, at all times material to this Complaint, was a limited liability  
 23       company organized under the laws of the State of Delaware, which, at all times relevant hereto, was  
 24       owned in equal 20% shares by each of Danielle Namvar, Gabriella Namvar, Ariel Namvar, Davina  
 25       Namvar and Eliora Namvar, who on information and belief are the children of Mousa.

26       41. Plaintiff is informed and believes, and thereon alleges, that defendant Bunherst, LLC  
 27       ("Bunherst"), is and, at all times material to this Complaint, was a limited liability company

1 organized under the laws of the State of Delaware, which, at all times relevant hereto, was wholly  
 2 owned by DGADE.

3       42. Plaintiff is informed and believes, and thereon alleges, that defendant Namco 8 LLC  
 4 (“Namco 8”), is a limited liability company organized under the laws of the State of Delaware  
 5 which, at all times relevant hereto, was wholly owned by Wishlab 90, LLC.

6       43. Plaintiff is informed and believes, and thereon alleges, that defendant Wishlab 90,  
 7 LLC (“Wishlab 90”), is a limited liability company organized under the laws of the State of  
 8 Delaware which, at all times relevant hereto, was owned by Magdiel (64%), Trifish (6%), Beshmada  
 9 (18%), Chapar, LLC (5%) and OPICS Properties, LLC (7%).

10      44. Plaintiff is informed and believes, and thereon alleges, that defendant Tritowne, LLC  
 11 (“Tritowne”) is and, at all times material to this Complaint, was a limited liability company  
 12 organized under the laws of the State of California, which, at all times relevant hereto, was wholly  
 13 owned by Trifish.

14      45. Plaintiff is informed and believes, and thereon alleges, that defendant Trigrove, LLC  
 15 (“Trigrove”) is and, at all times material to this Complaint, was a limited liability company  
 16 organized under the laws of the State of California, which, at all times relevant hereto, was wholly  
 17 owned by Trifish.

18      46. Plaintiff is informed and believes, and thereon alleges, that defendant Haron  
 19 Shabatian (“Shabatian”), is an individual and at all times material to this Complaint was a resident of  
 20 the County of Los Angeles, California.

21      47. In addition to obligations incurred in their individual capacities, each of the Namvar  
 22 Defendants is legally responsible for the repayment of transfers made to or for the benefit of their  
 23 children.

24      48. Plaintiff is informed and believes, and thereon alleges, that each Defendant, at all  
 25 material times, was the agent, employee, servant, alter ego, partner, co-conspirator, co-venturer  
 26 and/or legal representative of each of the other Defendants. Plaintiff is also informed and believe,  
 27 and thereon alleges, that in doing the things alleged in this Complaint, each Defendant acted within  
 28

1 the course and scope of said relationships and with the knowledge, permission, consent, ratification,  
2 and/or adoption of the other Defendants.

3 49. There exists, and at all times herein mentioned there existed, a unity of interest and  
4 ownership and control among the Namvar Defendants and the LLC Defendants, such that any  
5 individuality and separateness between them have ceased, and they are the alter egos of each other.  
6 Adherence to the fiction of the separate existence of the LLC Defendants distinct from the Namvar  
7 Defendants would permit an abuse of the corporate privilege and would sanction fraud and promote  
8 injustice, and, accordingly, the rights and duties of the Namvar Defendants in relation to each other  
9 and to third parties should be deemed those of joint venturers.

10 **General Allegations**

11 **A. LA Marriott Hotel**

12 50. On information and belief, Namco provided 100% of the equity required to purchase  
13 the Marriott Hotel in downtown Los Angeles (the “LA Marriott”). Prior to the purchase Namco paid  
14 \$24,133,218 directly to Marriott and other third parties, including three transfers of \$5,000,000 each  
15 on August 16, 2006, September 14, 2006 and October 13, 2006, and one transfer of \$8,857,446 on  
16 the closing date, March 1, 2007. The purchase price was \$108,750,000. The balance of the  
17 purchase price was paid from the proceeds of a purchase and construction loan from General Electric  
18 Real Estate.

19 51. Although Namco provided the investment capital, beneficial ownership was  
20 distributed among family members through a series of uncapitalized family entities. Title was  
21 placed in the name of, and payments were booked to the account of, LA Hotel Venture, which was  
22 formed on November 22, 2006, after Namco had already begun funding the purchase. On  
23 information and belief, LA Hotel Venture was uncapitalized. The operating agreement for LA Hotel  
24 Venture reflects a stated capitalization of \$1000 and, on information and belief, neither it nor any of  
25 its beneficial owners provided any of the funds used to purchase the LA Marriott.

26 52. 100% of the membership interests of LA Hotel Venture was held by Toyram, which  
27 also appears to have been formed in November 2006 pursuant to an undated operating agreement  
28 with a stated capital contribution of \$1000 by its sole member, Namari.

Case 2:10-ap-02945-BR Doc 10-2 Filed 01/25/11 Entered 01/25/11 16:58:36 Desc

Case 2:10-ap-02945-BR First Amended Complaint Document Filed 01/17/11 Entered 01/17/11 15:59:00 Desc  
Main Document Page 11 of 44

1       53.    Namari was also created in November 2006 though an initial operating agreement  
 2 was not executed until just before the closing date, on February 27, 2007. Again, the stated capital  
 3 contributions of its members totaled \$1000.

4       54.    Ezri was the designated manager of LA Hotel Venture, Toyram and Namari.

5       55.    Pursuant to its amended operating agreement, Namari was owned 64% by Ezri, 14%  
 6 by Magdiel, 9% by Trifish, 3% by Trisister and 10% by The Safi Trust.

7       56.    At all relevant times, Magdiel was wholly owned by Mousa, Trisister was wholly  
 8 owned by Helen, Lida and Hilda, and Trifish was owned in equal shares by Ramin, Sean and Tony.  
 9 Trifish was formed February 15, 1999 without any stated capital contributions by these three  
 10 brothers. On or about April 3, 2003, two of the Trifish brothers replaced themselves with wholly  
 11 owned entities: T.N. Management, Inc. (wholly owned by Tony), Net (wholly owned by Ramin) and  
 12 Believers (originally owned 99% by Sean and 1% by his wife, Nataly). In January 2008, Tony's  
 13 children (Alexandra, Noah and Rachel) were each assigned 18% of T.N. Management, Inc. In  
 14 January 2009, T.N. Management, Inc assigned its interest in Trifish to T.N. Management, LLC. In  
 15 July 2009, T.N. Management, LLC assigned its interest in Trifish to Light Source. The manager of  
 16 Light Source is Tony Namvar. In January 2009, Sean reallocated 60% of the ownership of Believers  
 17 to his wife, Nataly.

18       57.    Shortly after the closing of the LA Marriott purchase, on March 5, 2007, Ezri and his  
 19 brothers redistributed its beneficial ownership among the family. Ezri reduced his overall share of  
 20 Namari to 64%. Mousa's share increased to 14%. Trifish's interest was reduced to 9%. The Safi  
 21 Trust was given 10% and 3% was given to Trisister (held 1/3 each by Ezri's sisters, Helen, Hilda and  
 22 Lida). The amendment does not reflect any capital contributions to Namari by the new members.

23       58.    Reflecting the inadequate capitalization of LA Hotel Venture, Toyram, and Namari,  
 24 Namco continued to subsidize the project after the closing date, making transfers of \$3,776,115 that  
 25 were booked internally by Namco to the LA Marriott account. The cumulative total of Namco's  
 26 transfers in connection with the LA Marriott (the "LA Marriott Transfers") was \$27,909,333.  
 27 Namco was repaid a total of \$5,303,098, leaving an unpaid principal balance of \$22,606,235. With  
 28

Case 2:10-ap-02945-BR Doc 10-2 Filed 01/25/11 Entered 01/25/11 16:58:36 Desc

Case 2:10-ap-02945-BR Doc 7 Filed 01/11/11 Entered 01/11/11 15:59:00 Desc  
First Amended Complaint Page 12 of 41  
Main Document Page 12 of 44

1 8% simple interest to September 15, 2010, totaling \$6,806,735, the total owed to Namco in  
 2 repayment of the LA Marriott Transfers is \$29,412,970.

3 59. Based on the facts alleged herein, including without limitation the lack of  
 4 capitalization of the LLC Defendants, the unity of interest and control by the Namvar Brothers, the  
 5 absence of any economic substance or purpose except as titleholders and conduits for Namco funds  
 6 for the benefit of the Namvar Defendants, and their use in furtherance of the fiduciary defalcations,  
 7 fraud, diversion of assets and usurpation of corporate opportunities by the Namvar Defendants,  
 8 adherence to the fiction of the separate existence of the LLC Defendants would sanction fraud and  
 9 promote injustice, and the LLC Defendants LA Hotel Venture, Toyram, Namari, Magdiel, Trifish  
 10 and Trisister and their member Namvar Defendants are jointly and severally liable for repayment of  
 11 the LA Marriott Transfers.

12       B. **Las Vegas - Flamingo Road**

13 60. Between 2005 and 2007, Namco transferred millions of dollars to acquire properties  
 14 in Las Vegas, with the intention of developing residential condominiums, casinos, shopping centers  
 15 and apartment projects.

16 61. On information and belief, Namco provided 100% of the equity required to purchase  
 17 commercial real property located at 3715 West Flamingo Road in Las Vegas. Namco made escrow  
 18 deposits of \$3,673,800: \$500,000 on June 16, 2005, \$1.5 million on July 6, 2005, \$1,670,500 on  
 19 February 23, 2006 and \$3,300 on February 24, 2006, toward a total purchase price of \$11,650,000.  
 20 The balance of the purchase price was paid from a loan from Mirae Bank. The transaction closed on  
 21 February 27, 2006.

22 62. Although Namco provided all of the investment capital, title was placed in the name  
 23 of an entity, Dynasty 1 Tower, LLC ("Dynasty"), whose sole member was Ezri. Dynasty was  
 24 formed on February 16, 2006 and, prior to the February 26, 2006 closing of the purchase of the  
 25 Flamingo Road property, Ezri assigned his membership interest in Dynasty 1 Tower to Simon  
 26 Shakib. Pursuant to an Assignment Agreement dated March 10, 2006, Shakib's membership interest  
 27 was purchased by LLC Defendant Lancam, which was formed in August 2004 with no stated capital  
 28 contribution by its sole member, LLC Defendant Lacy 20.

1       63. Like the operating agreements of other Namvar family LLCs, the Lacy 20 operating  
 2 agreement does not contain any capital contribution requirements. Rather, under the heading  
 3 "Capital Contribution of Members of Lacy 20, LLC as of November 15, 1996," the operating  
 4 agreement simply assigns ownership percentages to Namvar family members. As set forth above,  
 5 the members of Lacy 20 and their assigned membership percentages were (a) the Namvar Family  
 6 Trust (a self-settled revocable trust for Ezri's children, Daniel, Malka and Shirah) (20%); (b) Mousa  
 7 (9%); (c) Daniel (7%); (d) Malka Namvar (7%); (e) Shirah Namvar (7%) and (f) Woodman Partners  
 8 (50%).

9       64. Likewise, the operating agreement of defendant Woodman Partners lists no capital  
 10 contributions from its members under the heading "Capital Contribution of Members," but only  
 11 assigns ownership percentages. The members of Woodman Partners and their assigned ownership  
 12 percentages are: (a) Sean (18%); (b) Tony (18%); (c) Ramin (18%); (d) Mousa (18%); (e) Helen  
 13 (5%); (f) Daniel (6%); (g) Malka Namvar (6%); (h) Shirah Namvar (6%); (i) Hilda (2.5%); and (j)  
 14 Lida (2.5%). Subsequently, in January 2003, Woodman Partners' operating agreement was amended  
 15 to substitute Believers for Sean, and T.N. Management, Inc. for Tony and Net for Ramin.

16       65. In January 2009, Sean assigned a 60% interest in Believers to Nataly Namvar. In  
 17 January 2008, T.N. Management, Inc. assigned 18% interests to each of Tony's children (Alexandra,  
 18 Noah and Rachel), then in January 2009 assigned its interest in Woodman Partners to T.N.  
 19 Management, LLC. In July 2009, T.N. Management, LLC assigned its interest in Woodman  
 20 Partners to Light Source (owned by Tony).

21       66. Subsequent to the closing, Namco received a wire transfer of \$3,000,000 from Simon  
 22 Shakib that was booked to this account and referenced as a loan repayment. Namco also made  
 23 journal entries reclassifying four other transactions, totaling \$700,000, as repayments on this  
 24 account.

25       67. Reflecting that the LLCs with legal or beneficial ownership lacked economic  
 26 substance, it was Namco that made all monthly payments on the Mirae Bank loan from the closing  
 27 date until October 1, 2008, and paid the property taxes. Namco made a total of \$2,015,845 in post-  
 28 purchase transfers, for a combined total of \$5,689,645 (the "Flamingo Road Transfers").

Case 2:10-ap-02945-BR Doc 10-2 Filed 01/25/11 Entered 01/25/11 16:58:36 Desc

Case 2:10-ap-02945-BR Doc 7 Filed 01/17/11 Entered 01/17/11 15:59:00 Desc

First Amended Complaint Page 14 of 44

1       68. The credits and debits alleged above leave an unpaid account balance of \$1,989,645.  
 2 At 8% simple interest, \$663,877 in interest has accrued as of September 15, 2010. Thus the total  
 3 owed to Namco in repayment of the Flamingo Road Transfers is \$2,653,622.

4       69. Based on the facts alleged herein, including without limitation the lack of  
 5 capitalization of the LLC Defendants, the unity of interest and control by the Namvar Brothers, the  
 6 absence of any economic substance or purpose except as titleholders and conduits for Namco funds  
 7 for the benefit of the Namvar Defendants, and their use in furtherance of the fiduciary defalcations,  
 8 fraud, diversion of assets and usurpation of corporate opportunities by the Namvar Defendants,  
 9 adherence to the fiction of the separate existence of the LLC Defendants would sanction fraud and  
 10 promote injustice, and the LLC Defendants Lancam, Lacy 20 and Woodman Partners and their  
 11 member Namvar Defendants are jointly and severally liable for repayment of the Flamingo Road  
 12 Transfers.

13       C. **Las Vegas - Sunset Springs**

14       70. On information and belief, Namco advanced \$35,497,957 to Lancam in connection  
 15 with the development of vacant land located at 10705 Rose Ave. in Las Vegas ("Sunset Springs" and  
 16 the "Sunset Springs Transfers").

17       71. On information and belief, Sunset Springs was acquired on February 20, 2006 for a  
 18 purchase price of \$30,367,213. Ownership of Sunset Springs was allocated 58% to Lancam (a shell  
 19 wholly owned by Lacy 20, as set forth above.

20       72. The remaining 42% interest in Sunset Springs was allocated to 10705 Rose Ave.,  
 21 LLC, which was 70% owned by Beshmada, LLC ("Beshmada"), comprised of Ezri and his children,  
 22 and 30% by a third party, Shuster Properties. Unlike most other Namvar LLCs, the 10705 Rose  
 23 Ave., LLC operating agreement actually specified initial capital contributions: \$2,280,000 by  
 24 Beshmada and \$120,000 by Shuster Properties. On January 4, 2006, Shuster Properties' interest was  
 25 transferred to Dimes, LLC ("Dimes") and the 30% ownership interest in 10705 Rose Ave., LLC was  
 26 assigned to Dimes, which was owned 50% by Ezri and 16.6% each by his children, Daniel, Malka  
 27 and Shirah. Beshmada was owned 25% each by Ezri's children, Daniel, Malka and Shirah, and by  
 28 Benjamin Namvar.

Case 2:10-ap-02945-BR Doc 10-2 Filed 01/25/11 Entered 01/25/11 16:58:36 Desc

Case 2:10-ap-02945-BR First Amended Complaint Doc 7 Filed 07/17/11 Entered 07/17/11 15:59:00 Desc  
Main Document Page 15 of 44

1       73.   Namco credited Lancam with \$28,949,596 in repayments, leaving an account balance  
 2 of \$6,648,361, with interest of \$2,062,254 through September 15, 2010. Thus the total owed to  
 3 Namco in repayment of the Sunset Springs Transfers is \$8,710,715.

4       74.   Based on the facts alleged herein, including without limitation the lack of  
 5 capitalization of the LLC Defendants, the unity of interest and control by the Namvar Brothers, the  
 6 absence of any economic substance or purpose except as titleholders and conduits for Namco funds  
 7 for the benefit of the Namvar Defendants, and their use in furtherance of the fiduciary defalcations,  
 8 fraud, diversion of assets and usurpation of corporate opportunities by the Namvar Defendants,  
 9 adherence to the fiction of the separate existence of the LLC Defendants would sanction fraud and  
 10 promote injustice, and the LLC Defendants Lancam, Lacy 20, Woodman Partners and their member  
 11 Namvar Defendants are jointly and severally liable for repayment of the Sunset Springs Transfers.

12       D.    Nam 5, Ltd. Account Receivable

13       75.   On August 25, 2004, Namco transferred \$5,000,000 to "Dream Team Partners, LLC."  
 14 Thereafter, Namco periodically made wire transfers to banks in Israel for the accounts of Dream  
 15 Team Partners, LLC, Nam 5, Ltd. and NUM 5 Ltd., all of which were all booked internally by  
 16 Namco to the same general ledger account number, in the name of Nam 5 Ltd. On information and  
 17 belief, Nam 5 is owned in equal 20% interests by Ezri, Tony, Sean, Mousa and Ramin.

18       76.   The total of Namco's transfers (the "Nam 5 Transfers") was \$15,015,987.50. Of this  
 19 amount, \$9,292,739 was repaid, leaving an unpaid principal balance of \$5,723,248. An additional  
 20 \$2,003,669 in simple interest at 8% had accrued as of September 15, 2010. Thus a total of  
 21 \$7,726,917, plus interest accrued after September 15, 2010, is owed to Namco in repayment of the  
 22 Nam 5 Transfers.

23       77.   Based on the facts alleged herein, including without limitation the lack of  
 24 capitalization of the LLC Defendants (including Dream Team Partners LLC, Nam 5, Ltd. and NUM  
 25 5 Ltd., whatever their corporate form), the unity of interest and control by the Namvar Brothers, the  
 26 absence of any economic substance or purpose except as titleholders and conduits for Namco funds  
 27 for the benefit of the Namvar Defendants, and their use in furtherance of the fiduciary defalcations,  
 28 fraud, diversion of assets and usurpation of corporate opportunities by the Namvar Defendants,

Case 2:10-ap-02945-BR Doc 10-2 Filed 01/25/11 Entered 01/25/11 16:58:36 Desc

Case 2:10-ap-02945-BR Doc 7 Filed 01/17/11 Entered 01/17/11 15:59:00 Desc  
First Amended Complaint Page 16 of 41  
Main Document Page 16 of 44

1 adherence to the fiction of the separate existence of the LLC Defendants would sanction fraud and  
 2 promote injustice, the Namvar Brothers, Nam 5 Ltd., Dream Team Partners, LLC, and NUM 5 Ltd.  
 3 are jointly and severally liable for repayment of the Nam 5 Transfers.

4           E. **DGADE of Delaware, LLC**

5           78. DGADE is a limited liability company owned in equal 20% shares by Mousa's  
 6 children: Danielle Namvar, Gabriella Namvar, Ariel Namvar, Davina Namvar and Eliora Namvar.  
 7 Mousa is the sole signatory to the DGADE Operating Agreement as manager and as custodian for  
 8 each of his children.

9           79. Namco made numerous transfers to or for the benefit of DGADE:

10           a. On November 3, 2005, Namco paid \$484,030 for the purchase by DGADE of  
 11 an interest in vacant land in Hilo, Hawaii ("Kuristown Heights").

12           b. On December 28, 2006 and July 31, 2007, Namco made transfers to DGADE  
 13 of \$1,957,500 and \$2,203,500 for investment in Older & Wiser, LLC ("Older & Wiser") a Namvar  
 14 family LLC in which DGADE was assigned a 45% ownership interest.

15           d. On November 15, 2005, April 4, 2006, October 24, 2006 and June 27, 2007,  
 16 Namco made transfers invested by Mousa on DGADE's account in Older & Wiser in the amounts of  
 17 \$1,100,000, \$652,500, \$72,500 and \$464,000.

18           80. The total of these transfers by Namco on DGADE's account (the "DGADE  
 19 Transfers") was \$6,934,030. No amount has been repaid. An additional \$2,151,871 in simple  
 20 interest at 8% had accrued as of September 15, 2010.

21           81. Based on the facts alleged herein, including without limitation the lack of  
 22 capitalization of the LLC Defendants, the unity of interest and control by the Namvar Brothers, the  
 23 absence of any economic substance or purpose except as titleholders and conduits for Namco funds  
 24 for the benefit of the Namvar Defendants, and their use in furtherance of the fiduciary defalcations,  
 25 fraud, diversion of assets and usurpation of corporate opportunities by the Namvar Defendants,  
 26 adherence to the fiction of the separate existence of the LLC Defendants would sanction fraud and  
 27 promote injustice, and Mousa is jointly and severally liable with DGADE for repayment of the  
 28 DGADE Transfers.

Case 2:10-ap-02945-BR Doc 10-2 Filed 01/25/11 Entered 01/25/11 16:58:36 Desc

Case 2:10-ap-02945-BR First Amended Complaint Doc 7 Filed 07/17/11 Page 17 of 44 Entered 09/11/11 15:59:00 Desc

Main Document Page 17 of 44

1       82. Beginning in October 2008, DGADE transferred or caused to be transferred on its  
 2 account approximately \$6,948,400 to Mousa (the “DGADE Fraudulent Transfers”). These transfers  
 3 were made with the actual intent to hinder or defraud Namco’s collection of amounts owed by  
 4 DGADE, and/or rendered DGADE insolvent and were made for less than reasonably equivalent  
 5 value, and thus are avoidable as fraudulent transfers and recoverable from Mousa.

6       **F. Security Pacific Bank**

7       83. In or about 1997, Ezri acquired a majority interest in Security Pacific Bancorp, a state  
 8 chartered bank based at Namco’s headquarters in the Wilshire Bundy building, 12121 Wilshire  
 9 Boulevard, in West Los Angeles. Ezri was the majority shareholder and Chairman of the Board of  
 10 Directors.

11       84. Namco funds were used to purchase stock for family members in Security Pacific.  
 12 All of the Namvar Brothers, their three sisters, three of Ezri’s children and the Namvar Family Trust  
 13 held shares of Security Pacific. As of December 31, 2006, there were 7,843,183 shares outstanding  
 14 of which 7,649,383, or 97.53%, were owned by the Namvar family members.

15       85. By general journal entries and checks made or issued five separate times during late  
 16 2002 and additionally on March 27, 2003, May 5, 2003, May 19, 2003, September 30, 2003, March  
 17 3, 2004, June 30, 2004, September 29, 2004, December 30, 2005, June 30, 2006, and December 29,  
 18 2006, Namco transferred a total of \$4,850,952 to Mousa for the purchase of shares of Security  
 19 Pacific (the “Mousa SP Transfers”). None of this amount has been repaid. With unpaid interest of  
 20 \$2,460,957 accrued through September 15, 2010 from the date of such transfers, the total unpaid  
 21 balance is \$7,311,909. Mousa is individually liable for payment of this amount, plus interest  
 22 accrued after September 15, 2010.

23       86. By general journal entries made on May 19, 2003, March 3, 2004, June 30, 2004,  
 24 September 29, 2004, and December 29, 2006, Namco transferred a total of \$1,807,871 to Trifish for  
 25 the purchase of Security Pacific stock (the “Trifish SP Transfers”). As set forth above, Trifish was  
 26 owned at such time in equal parts by Ramin, Sean and Tony. On March 27, 2003, Namco made a  
 27 general journal entry issuing a \$343,962 credit to Trifish on this account, leaving a principal unpaid  
 28 balance of \$1,463,909. With unpaid interest of \$658,364 accrued through September 15, 2010 from

Case 2:10-ap-02945-BR Doc 10-2 Filed 01/25/11 Entered 01/25/11 16:58:36 Desc

Case 2:10-ap-02945-BR Doc 7 Filed 01/11/11 Entered 01/11/11 15:59:00 Desc  
First Amended Complaint Page 18 of 44  
Main Document Page 18 of 44

1 the date of such transfers, the total unpaid balance is \$2,122,273. That amount, with interest accrued  
 2 thereafter, is owed to Namco in repayment of the Trifish SP Transfers. Based on the facts alleged  
 3 herein, Ramin, Sean and Tony are jointly and severally liable with LLC Defendant Trifish for  
 4 repayment of the Trifish SP Transfers.

5 87. On December 29, 2006, Namco transferred \$805,231.43 to Trisister for the purchase  
 6 of Security Pacific stock ("First Trisister SP Transfer"). Trisister is owned by Ezri's sisters, Helen,  
 7 Hilda and Lida, in equal shares. None of this amount has been repaid. With unpaid interest of  
 8 \$242,643 accrued through September 15, 2010 from the date of the transfer, the total unpaid balance  
 9 is \$1,047,874.

10 88. On August 29, 2008, Namco transferred \$2,964,880 for the purchase of shares of  
 11 Security Pacific for Trisister (the "Second Trisister SP Transfer" and, with the First Trisister SP  
 12 Transfer, the "Trisister SP Transfers"). The memo field for this transaction indicates that Helen  
 13 Shadi should be allocated 2 shares, or 50% of the total, while Hilda and Lida should be allocated  
 14 25%. None of this amount has been repaid. With unpaid interest of \$492,170 accrued through  
 15 September 15, 2010 from the date of the transfer, the total unpaid balance is \$3,457,050. Thus,  
 16 collectively, the amount owed Namco in repayment of the Trisister SP Transfers is \$4,504,924, plus  
 17 interest accrued since September 15, 2010.

18 89. Based on the facts alleged herein, Trisister, Helen, Hilda and Lida are jointly and  
 19 severally liable for repayment of the Trisister SP Transfers.

20 **G. Wilshire Bundy Ground Lease**

21 90. On February 21, 2007, Namco purchased the ground lease underlying its headquarters  
 22 at 12121 Wilshire Blvd., Los Angeles (the "Wilshire Bundy Ground Lease"). The real property  
 23 subject to the Wilshire Bundy Ground Lease is leased to five LLCs that own the leasehold estate on  
 24 the fourteen story, 307,000 square foot office building located thereon (the "Wilshire Bundy  
 25 Property").

26 91. The total purchase price of the Wilshire Bundy Ground Lease was \$10,400,000.  
 27 Namco transferred to escrow all of the cash required for the down payment and transaction costs, in  
 28

Case 2:10-ap-02945-BR Doc 10-2 Filed 01/25/11 Entered 01/25/11 16:58:36 Desc

Case 2:10-ap-02945-BR First Amended Complaint Doc 7 Filed 01/17/11 Entered 01/17/11 15:59:00 Desc  
Main Document Page 19 of 44

1 the amount of \$502,038.74 (the "Wilshire Bundy Ground Lease Purchase Transfers"), and  
 2 \$10,000,000 was borrowed from American Gen. Life and Accident Ins. Co.

3       92.     Although Namco paid 100% of the equity capital, title was given to three family  
 4     LLCs, pursuant to a Tenants in Common Agreement dated February 14, 2007: (a) 15% to Tribun  
 5     (99% owned by Trifish); (b) 18% to Bunherst (wholly owned by DGADe, i.e., Mousa's children);  
 6     and (c) 67% to Bundy Dimes, LLC, a shell LLC wholly owned by Dimes, LLC which, in turn, was  
 7     owned 50% by Ezri and 16.6% each by his children, Daniel, Malka and Shirah. Namco made  
 8     journal entries reclassifying its wire transfer to escrow to debit the accounts of Bundy Dimes  
 9     (\$336,366), Tribun (\$75,306) and Bunherst (\$90,367).

10       93.     Subsequent to the closing, Namco made transfers totaling \$148,373 for payment of  
 11     obligations in connection with the Wilshire Bundy Ground Lease (the "Wilshire Bundy Post-Closing  
 12     Transfers" and, collectively with the Wilshire Bundy Ground Lease Purchase Transfers, the  
 13     "Wilshire Bundy Transfers").

14       94.     A total of \$381,372 in repayments was credited to the accounts of Bundy Dimes and  
 15     Bunherst, including a purported repayment by Bunherst of \$90,372 capital contribution and a  
 16     \$250,000 check from Pentaco Management credited to Bundy Dimes. No repayment was made on  
 17     account of Tribun or Trifish. The gross unpaid account balance is \$269,040. With unpaid interest of  
 18     \$106,017 accrued through September 15, 2010, the total balance due to Namco in repayment of the  
 19     Wilshire/Bundy Transfers is \$375,057.

20       95.     Based on the facts alleged herein, including without limitation the lack of  
 21     capitalization of the LLC Defendants, the unity of interest and control by the Namvar Brothers, the  
 22     absence of any economic substance or purpose except as titleholders and conduits for Namco funds  
 23     for the benefit of the Namvar Defendants, and their use in furtherance of the fiduciary defalcations,  
 24     fraud, diversion of assets and usurpation of corporate opportunities by the Namvar Defendants,  
 25     adherence to the fiction of the separate existence of the LLC Defendants would sanction fraud and  
 26     promote injustice, and Ramin, Sean and Tony and LLC Defendants Tribun and Trifish are jointly  
 27     and severally liable for repayment of the Wilshire/Bundy Transfers.

1                   **H. Trigrove, LLC**

2                   96. On information and belief, on October 5, 2004, Namco transferred \$3,500,000 to  
 3 acquire a 300 unit apartment building located at 150 Woodway Drive, Jackson, Mississippi (the  
 4 "Trigrove Transfer"). Title was placed in Trigrove, which on information and belief was an  
 5 uncapitalized entity wholly owned by Trifish, which was owned in equal thirds by Sean (through  
 6 Believers), Tony (through Light Source) and Ramin (through Net).

7                   97. Trigrove did not repay the Trigrove Transfer. Ramin, Sean and Tony are jointly and  
 8 severally liable, with LLC Defendants Trigrove and Trifish, for the amount of the Trigrove Transfer,  
 9 \$3,500,000, plus unpaid interest of \$1,688,556 accrued through September 15, 2010, in the gross  
 10 amount of \$5,188,556.

11                  98. On January 1, 2008, Namco purported to cancel Trigrove's liability. It made general  
 12 journal entries reclassifying the Trigrove account receivable by applying it to Namco's purported  
 13 debt to Trifish. In substance, the general journal entries effectuated a payment from Namco to  
 14 Trifish in the amount of the Trigrove account receivable.

15                  99. In the event that the application of the Trigrove account receivable to the purported  
 16 Trifish account payable is deemed to reduce the liability of Trigrove to Namco, such transfer was  
 17 made to or for the benefit of Trifish within twelve months of the petition date, and so would be  
 18 avoidable as a preference (the "Trigrove Preferential Transfer").

19                  100. Based on the facts alleged herein, including without limitation the lack of  
 20 capitalization of the LLC Defendants, the unity of interest and control by the Namvar Brothers, the  
 21 absence of any economic substance or purpose except as titleholders and conduits for Namco funds  
 22 for the benefit of the Namvar Defendants, and their use in furtherance of the fiduciary defalcations,  
 23 fraud, diversion of assets and usurpation of corporate opportunities by the Namvar Defendants,  
 24 adherence to the fiction of the separate existence of the LLC Defendants would sanction fraud and  
 25 promote injustice, Trigrove, Trifish, Ramin, Sean and Tony are jointly and severally liable for  
 26 repayment of the Trigrove Transfer or the Trigrove Preferential Transfer.

Case 2:10-ap-02945-BR Doc 10-2 Filed 01/25/11 Entered 01/25/11 16:58:36 Desc

Case 2:10-ap-02945-BR First Amended Complaint Doc 7 Filed 01/17/11 Entered 01/17/11 15:59:00 Desc  
Main Document Page 21 of 441           I.     Tritowne, LLC

2           101. On information and belief, on June 15, 2004, Namco transferred \$2,750,000 to  
 3           acquire a 139 unit apartment building located at 3895 Northview Dr., Jackson, Mississippi (the  
 4           “Tritowne Transfer”). Title was placed in Tritowne, which on information and belief was an  
 5           uncapitalized entity wholly owned by Trifish, owned in equal thirds by Sean (through Believers),  
 6           Tony (through Light Source) and Ramin (through Net).

7           102. Tritowne did not repay the Tritowne Transfer. Tritowne, Ramin, Sean and Tony are  
 8           jointly and severally liable for the amount of the Tritowne Transfer, \$2,750,000, plus unpaid interest  
 9           of \$1,395,167 accrued through September 15, 2010, in the gross amount of \$4,145,167.

10           103. On January 1, 2008, Namco purported to cancel Tritowne’s liability. It made general  
 11           journal entries reclassifying the Tritowne account receivable by applying it to Namco’s purported  
 12           debt to Trifish. In substance, the general journal entries effectuated a payment from Namco to  
 13           Trifish in the amount of the Tritowne account receivable.

14           104. In the event that the application of the Tritowne account receivable to the purported  
 15           Trifish account payable is deemed to reduce the liability of Tritowne to Namco, such transfer was  
 16           made to or for the benefit of Trifish within twelve months of the petition date, and so would be  
 17           avoidable as a preference (the “Tritowne Preferential Transfer”).

18           105. Based on the facts alleged herein, including without limitation the lack of  
 19           capitalization of the LLC Defendants, the unity of interest and control by the Namvar Brothers, the  
 20           absence of any economic substance or purpose except as titleholders and conduits for Namco funds  
 21           for the benefit of the Namvar Defendants, and their use in furtherance of the fiduciary defalcations,  
 22           fraud, diversion of assets and usurpation of corporate opportunities by the Namvar Defendants,  
 23           adherence to the fiction of the separate existence of the LLC Defendants would sanction fraud and  
 24           promote injustice, Tritowne, Trifish, Ramin, Sean and Tony are jointly and severally liable for  
 25           repayment of the Tritowne Transfer or the Tritowne Preferential Transfer.

PACHULSKI STANG ZIEHL & JONES LLP  
ATTORNEYS AT LAW  
Los Angeles, California

Case 2:10-ap-02945-BR Doc 10-2 Filed 01/25/11 Entered 01/25/11 16:58:36 Desc

Case 2:10-ap-02945-BR Doc 7 Filed 01/11/11 Entered 01/11/11 15:59:00 Desc  
First Amended Complaint Page 22 of 41  
Main Document Page 22 of 441           **J. Trifish Preferential Transfers**2       106. On information and belief, Namco made the following transfers to Trifish, totaling  
3       \$1,160,000 (the "Trifish Preferential Transfers"), within twelve months of the Petition Date, on the  
4       dates indicated:

5           a.     1/09/08     \$500,000  
6           b.     2/19/98     \$200,000  
7           c.     4/03/08     \$250,000  
8           d.     8/18/08     \$210,000

9       107. Such payments were made on account of an antecedent debt to Trifish.

10      108. Based on the facts alleged herein, including without limitation the lack of  
11       capitalization of the LLC Defendants, the unity of interest and control by the Namvar Brothers, the  
12       absence of any economic substance or purpose except as titleholders and conduits for Namco funds  
13       for the benefit of the Namvar Defendants, and their use in furtherance of the fiduciary defalcations,  
14       fraud, diversion of assets and usurpation of corporate opportunities by the Namvar Defendants,  
15       adherence to the fiction of the separate existence of the LLC Defendants would sanction fraud and  
16       promote injustice, Trifish, Ramin, Sean and Tony are jointly and severally liable for repayment of  
17       the Trifish Preferential Transfers.18           **K. Mousa Preferential Transfers**19       109. On information and belief, Namco made the following transfers to Mousa, totaling  
20       \$900,000 (the "Mousa Preferential Transfers"), within twelve months of the Petition Date, on the  
21       dates indicated:

22           a.     1/25/08     \$100,000  
23           b.     1/28/08     \$100,000  
24           c.     3/26/08     \$100,000  
25           d.     4/11/08     \$250,000  
26           e.     5/01/08     \$50,000  
27           f.     5/14/08     \$300,000

28       110. Such payments were made on account of an antecedent debt to Mousa.

1                   **L. RPM Preferential Transfer**

2                   111. On or about April 20, 2007, RPM Investments ("RPM") transferred \$9,300,000 to  
3 Trifish, and Trifish executed a \$9,300,000 promissory note in favor of RPM. On the same date,  
4 Trifish loaned \$9,000,000 to Namco.

5                   112. On or about June 29, 2007, RPM transferred \$6,500,000 to Trifish, which executed a  
6 \$6,500,000 promissory note in favor of RPM. On the same date, Trifish loaned \$6,500,000 to  
7 Namco.

8                   113. On information and belief, on or about December 31, 2007, Namco assumed the  
9 \$15,800,000 obligation of Trifish to RPM, which transaction was recorded on the books of both  
10 Trifish and Namco as reducing Namco's account payable to Trifish in like amount (the "RPM  
11 Preferential Transfer").

12                  114. Based on the facts alleged herein, including without limitation the lack of  
13 capitalization of the LLC Defendants, the unity of interest and control by the Namvar Brothers, the  
14 absence of any economic substance or purpose except as titleholders and conduits for Namco funds  
15 for the benefit of the Namvar Defendants, and their use in furtherance of the fiduciary defalcations,  
16 fraud, diversion of assets and usurpation of corporate opportunities by the Namvar Defendants,  
17 adherence to the fiction of the separate existence of the LLC Defendants would sanction fraud and  
18 promote injustice, Trifish, Ramin, Sean and Tony are jointly and severally liable for repayment of  
19 the RPM Preferential Transfer.

20                  **M. Family Transfers**

21                  115. On information and belief, commencing on July 1, 1998, Namco made frequent  
22 transfers to Daniel and to third parties on behalf of Daniel (the "Daniel Transfers"), and kept an  
23 account of debits and credits attributable to Daniel. The balance of such account is \$51,198,185,  
24 plus accrued interest of \$18,243,514 through September 15, 2010, which sum is owed and payable to  
25 Namco by Daniel, with current interest.

26                  116. On information and belief, commencing on January 8, 2004, Namco made frequent  
27 transfers to Benjamin and to third parties on behalf of Benjamin (the "Benjamin Transfers"), and  
28 kept an account of debits and credits attributable to Benjamin. The balance of such account is



Case 2:10-ap-02945-BR Doc 10-2 Filed 01/25/11 Entered 01/25/11 16:58:36 Desc

Case 2:10-ap-02945-BR First Amended Complaint Doc 7 Filed 01/17/11 Entered 01/11/11 15:59:00 Desc  
Main Document Page 24 of 44

1 \$52,269,242, plus accrued interest of \$19,569,325 through September 15, 2010, which sum is owed  
 2 and payable to Namco by Benjamin, with current interest.

3 117. On information and belief, commencing July 1, 1998, Namco made frequent transfers  
 4 to Malka and to third parties on behalf of Malka (the "Malka Transfers"), and kept an account of  
 5 debits and credits attributable to Malka. The balance of such account is \$51,206,578, plus accrued  
 6 interest of \$18,193,855 through September 15, 2010, which sum is owed and payable to Namco by  
 7 Malka, with current interest.

8 118. On information and belief, commencing on July 1, 1998, Namco made frequent  
 9 transfers to Shirah and to third parties on behalf of Shirah (the "Shirah Transfers"), and kept an  
 10 account of debits and credits attributable to Shirah. The balance of such account is \$51,243,147,  
 11 plus accrued interest of \$18,215,514 through September 15, 2010, which sum is owed and payable to  
 12 Namco by Shirah, with current interest.

13 119. On information and belief, commencing on July 1, 1998, Namco made frequent  
 14 transfers to Helen and to third parties on behalf of Helen (the "Helen Transfers"), and kept an  
 15 account of debits and credits attributable to Helen. The balance of such account is \$767,933, plus  
 16 accrued interest of \$371,777 through September 15, 2010, which sum is owed and payable to Namco  
 17 by Helen, with current interest.

18       N.     **Namco 8 and Red Feather Mall**

19 120. Namco 8 was formed on or about January 18, 2002, to develop real property located  
 20 at 4920 W. Cheyenne Avenue, Las Vegas, Nevada (the "Red Feathers Mall"). The property was  
 21 purchased on or about March 27, 2002 for \$7,913,852.

22 121. Namco 8's sole member was Wilshire 19, LLC, whose sole member was Ezri.

23 122. On or about February 10, 2004, Wilshire 19 assigned its interest in Namco 8 to  
 24 Canyon Springs Shopping Center, LLC, for a purchase price of \$11,650,000.00.

25 123. On June 29, 2007, Wishlab 90 acquired Canyon Springs' interest in Namco 8, for  
 26 \$6.2 million and assumption of the \$5.8 million balance on the secured loan. On information and  
 27 belief, Wishlab 90 was owned 64% by Mousa (through Magdiel), 6% by Trifish, 5% by Chapar,  
 28 LLC, 7% by OPICS Properties, LLC and 18% by Beshmada, LLC.

1           124. Commencing February 4, 2002, Namco made transfers to Namco 8 totaling  
 2           \$29,062,610.10. Of that amount, \$18,594,767 was credited as paid, leaving a principal unpaid  
 3           balance of \$10,467,843. With unpaid simple interest at 8% accrued through September 15, 2010 in  
 4           the amount of \$5,997,118, the Namvar Brothers are jointly and severally liable with Namco 8 and  
 5           Wishlab 90 in the amount of \$16,464,961.

6           125. Namco accounted separately for additional transfers made to or for the benefit of  
 7           Namco 8 in connection with the Red Feathers Mall, commencing on or about January 12, 2004.  
 8           These transfers totaled \$6,454,552.78, of which \$3,004,097.16 was repaid, leaving a principal  
 9           balance of \$3,450,455.62. With unpaid simple interest at 8% accrued through September 15, 2010  
 10           in the amount of \$1,349,310, the Namvar Brothers are jointly and severally liable with Namco 8 and  
 11           Wishlab 90 for an additional \$4,799,766. Thus the total amount owed to Namco on the transfers  
 12           made by Namco on the accounts of Namco 8 and the Red Feathers Mall (the "Red Feathers  
 13           Transfers") is \$21,264,727, plus interest accrued after September 15, 2010.

14           126. Based on the facts alleged herein, including without limitation the lack of  
 15           capitalization of the LLC Defendants, the unity of interest and control by the Namvar Brothers, the  
 16           absence of any economic substance or purpose except as titleholders and conduits for Namco funds  
 17           for the benefit of the Namvar Defendants, and their use in furtherance of the fiduciary defalcations,  
 18           fraud, diversion of assets and usurpation of corporate opportunities by the Namvar Defendants,  
 19           adherence to the fiction of the separate existence of the LLC Defendants would sanction fraud and  
 20           promote injustice, Namco 8, Wishlab 90 and the Namvar Brothers are jointly and severally liable for  
 21           repayment of the Red Feathers Transfers.

23           **FIRST CLAIM FOR RELIEF**

24           **(Breach of Fiduciary Duty)**

25           **(Against Tony)**

27           127. Plaintiff refers to and incorporates by reference, as though fully set forth herein, each  
 28           of the foregoing allegations of this Complaint.

128. At all relevant times, Tony owed a fiduciary duty to Namco to act in good faith, in the best interests of the corporation, with such care as an ordinarily prudent person in a like position would use under similar circumstances, and without conflict of interest.

129. In engaging in the conduct, directing, causing, authorizing and entering into the transactions described and alleged herein, Tony violated that fiduciary duty.

130. As a proximate result of the breaches of fiduciary duty, Namco suffered damages, in an amount to be established at trial.

131. In engaging in the conduct alleged herein, Tony was guilty of oppression, fraud or malice, entitling Plaintiff, in addition to the actual damages, to recover damages for the sake of example and by way of punishing this defendant.

## **SECOND CLAIM FOR RELIEF**

### **(Aiding and Abetting Breach of Fiduciary Duty)**

**(Against Mousa, Sean and Ramin)**

132. Plaintiff refers to and incorporates by reference, as though fully set forth herein, each of the foregoing allegations of this Complaint.

133. At all relevant times, Ezri and Tony owed a fiduciary duty to Namco to act in good faith, in the best interests of the corporation, with such care as an ordinarily prudent person in a like position would use under similar circumstances, and without conflict of interest.

134. In engaging in the conduct, directing, causing, authorizing and entering into the transactions described and alleged herein, Ezri and Tony violated that fiduciary duty.

135. Mousa, Sean, and Ramin had actual knowledge of Ezri's and Tony's violation of such fiduciary duty.

136. Mousa, Sean, and Ramin substantially assisted Ezri and Tony in breaching their fiduciary duty.

137. As a proximate result of the breaches of fiduciary duty, Namco suffered damages, in an amount to be established at trial.

138. In engaging in the conduct alleged herein, Mousa, Sean, and Ramin were guilty of oppression, fraud or malice, entitling Plaintiff, in addition to the actual damages, to recover damages for the sake of example and by way of punishing these defendants.

**THIRD CLAIM FOR RELIEF**

### **(Breach of Express or Implied Contract)**

**(Against All Defendants)**

139. Plaintiff refers to and incorporates by reference, as though fully set forth herein, each of the foregoing allegations of this Complaint.

140. As alleged herein, Namco made transfers to certain Defendants described and referenced in the Complaint as: (a) the LA Marriott Transfers; (b) the Flamingo Road Transfers; (c) the Sunset Springs Transfers; (d) the Nam 5 Transfers; (e) the DGADE Transfers; (f) the Mousa SP Transfers; (g) the Trifish SP Transfers; (h) the Trisister SP Transfer; (i) the Trisister SP Transfers; (j) the Wilshire Bundy Transfers; (k) the Tritowne Transfer; (l) the Trigrove Transfer; (m) the Daniel Transfers; (n) the Benjamin Transfers; (o) the Malka Transfers; (p) the Shirah Transfers; (q) the Helen Transfers; and (r) the Red Feathers Transfers (collectively, the "Namvar Family Transfers").

141. As to each of the Namvar Family Transfers, Namco and Defendants understood and agreed that transfers made by Namco to or for the benefit of a Defendant, or a Defendant's children, would be repaid to Namco, with interest from the time of such transfers.

142. Defendants agreed to be bound by such terms without a written agreement, and/or confirmed such agreement by their conduct.

143. All conditions required for each Defendant's performance of each agreement have been satisfied, except those excused by reason of a Defendant's conduct.

144. The Namvar Family Transfers identified below have not been repaid by the parties responsible for the repayment of such transfers (as identified below in parentheses), in the following amounts (plus interest accrued after September 15, 2010):

- 1 (a) The LA Marriott Transfers: \$29,412,970 (Mousa,  
2 Ramin, Sean, Tony, LA Hotel Venture, Toyram,  
3 Namari, Magdiel and Trifish, jointly and severally)
- 4 (b) Flamingo Road Transfers: \$2,653,622 (all Namvar  
5 Defendants, Lancam, Lacy 20 and Woodman Partners,  
6 jointly and severally)
- 7 (c) Sunset Springs Transfers: \$8,710,715 (all Namvar  
8 Defendants, Lancam, Lacy 20 and Woodman Partners,  
9 jointly and severally)
- 10 (d) Nam 5 Transfers: \$7,726,917 (Ezri, Mousa, Sean,  
11 Tony, Ramin, Nam 5, Ltd., Dream Team Partners,  
12 LLC, and NUM 5, LLC, jointly and severally)
- 13 (e) DGADE Transfers: \$9,08,901 (Mousa and DGADE,  
14 jointly and severally)
- 15 (f) Mousa SP Transfers: \$7,311,909 (Mousa)
- 16 (g) Trifish SP Transfers: \$2,122,273 (Ramin, Sean, Tony  
17 and Trifish, jointly and severally)
- 18 (h) Trisister SP Transfers: \$4,504,924 (Helen, Lida, Hilda  
19 and Trisister, jointly and severally)
- 20 (i) Wilshire Bundy Transfers: \$375,057 (Ramin, Sean,  
21 Tony, Tribun, and Trifish, jointly and severally)
- 22 (j) Trigrove Transfer: \$5,188,556 (Ramin, Sean, Tony,  
23 Trifish, and Trigrove, jointly and severally)
- 24 (k) Tritowne Transfer: \$4,145,167 (Ramin, Sean, Tony,  
25 Trifish, and Tritowne, jointly and severally)
- 26 (l) Daniel Transfers: \$69,441,699 (Daniel)
- 27 (m) Benjamin Transfers: \$71,838,567 (Benjamin)
- 28 (n) Malka Transfers: \$69,400,433 (Malka)
- (o) Shirah Transfers: \$69,458,661 (Shirah)
- (p) Helen Transfers: \$1,139,710 (Helen)
- (q) Red Feathers Transfers: \$21,264,727 (Namco 8,  
Wishlab 90, Mousa, Tony, Sean and Ramin)

145. Namco has been harmed by Defendants' failure to repay the Namvar Family  
Transfers, in the amounts stated or subject to proof at trial, plus interest to the date of judgment.

Case 2:10-ap-02945-BR Doc 10-2 Filed 01/25/11 Entered 01/25/11 16:58:36 Desc

Case 2:10-ap-02945-BR First Amended Complaint Doc 7 Filed 01/11/11 Entered 01/11/11 15:59:00 Desc  
Main Document Page 29 of 44

1 **FOURTH CLAIM FOR RELIEF**  
2

3 (Open Book Account)  
4

5 (Against All Defendants)  
6

7 146. Plaintiff refers to and incorporates by reference, as though fully set forth herein, each  
8 of the foregoing allegations of this Complaint.

9 147. Namco and Defendants engaged in regular financial transactions, specifically  
10 including the Namvar Family Transfers.

11 148. Namco kept accounts of the debits and credits in the investments in which the  
12 Namvar Family Transfers were made;

13 149. Defendants owe Namco money on such accounts, in the amounts and by the  
14 Defendants alleged in paragraph 136, *supra*.

15 **FIFTH CLAIM FOR RELIEF**  
16

17 (Unjust Enrichment)  
18

19 (Against All Defendants)  
20

21 150. Plaintiff refers to and incorporates by reference, as though fully set forth herein, each  
22 of the foregoing allegations of this Complaint.

23 151. In making the Namvar Family Transfers alleged herein, Namco conferred a benefit  
24 upon the recipients and beneficiaries of the Namvar Family Transfers.

25 152. Defendants knew of and accepted the benefit.

26 153. Retention of the benefit of the Namvar Family Transfers under the circumstances  
27 would be inequitable or unconscionable.

28

PACHULSKI STANG ZIEHL & JONES LLP  
ATTORNEYS AT LAW  
LOS ANGELES, CALIFORNIA

Case 2:10-ap-02945-BR Doc 10-2 Filed 01/25/11 Entered 01/25/11 16:58:36 Desc

Case 2:10-ap-02945-BR First Amended Complaint Doc 7 Filed 01/11/11 Page 30 of 41 Entered 01/11/11 15:59:00 Desc  
Main Document Page 30 of 44

1 **SIXTH CLAIM FOR RELIEF**  
2

3 **(For Avoidance and Recovery of Trigrove Preferential Transfer Pursuant to 11 U.S.C. §§ 547  
and 550)**

4 **(Against Sean, Tony, Ramin and Trifish)**

5 154. Plaintiff refers to and incorporates by reference, as though fully set forth herein, each  
6 of the foregoing allegations of this Complaint.

7 155. The Trigrove Preferential Transfer was a transfer of an interest of Namco in property,  
8 to or for the benefit of Trifish, Sean, Tony and Ramin, on account of an antecedent debt owed by  
9 Namco before such transfer was made.

10 156. The Trigrove Preferential Transfer was made while Namco was insolvent.

11 157. Trifish, Sean, Tony and Ramin are each insiders within the meaning of 11 U.S.C. §  
12 101(31).

13 158. The Trigrove Preferential Transfer was made within one year of the Petition Date.

14 159. The Trigrove Preferential Transfer enabled Sean, Tony, Ramin and Trifish to receive  
15 more than they would receive if Namco's case were a case under Chapter 7 of the Bankruptcy Code,  
16 the transfer had not been made, and they received payment on the debt to the extent provided by the  
17 Bankruptcy Code.

18 160. Accordingly, pursuant to 11 U.S.C. §§ 547 and 550, Plaintiff is entitled to avoidance  
19 of the Trigrove Preferential Transfer, and for judgment against the Sean, Tony, Ramin and Trifish in  
20 the amount of \$3,500,000, plus interest.

22 **SEVENTH CLAIM FOR RELIEF**  
23

24 **(For Avoidance and Recovery of Tritowne Preferential Transfer Pursuant to 11 U.S.C. §§ 547  
and 550)**

25 **(Against Sean, Tony, Ramin and Trifish)**

26 161. Plaintiff refers to and incorporates by reference, as though fully set forth herein, each  
27 of the foregoing allegations of this Complaint.

162. The Tritowne Preferential Transfer was a transfer of an interest of Namco in property,  
2 to or for the benefit of Trifish, Sean, Tony and Ramin, on account of an antecedent debt owed by  
3 Namco before such transfer was made.

163. The Tritowne Preferential Transfer was made while Namco was insolvent.

164. Trifish, Sean, Tony and Ramin are each insiders within the meaning of 11 U.S.C. §  
6 101(31).

165. The Tritowne Preferential Transfer was made within one year of the Petition Date.

166. The Tritowne Preferential Transfer enabled Sean, Tony, Ramin and Trifish to receive  
9 more than they would receive if Namco's case were a case under Chapter 7 of the Bankruptcy Code,  
10 the transfer had not been made, and they received payment on the debt to the extent provided by the  
11 Bankruptcy Code.

167. Accordingly, pursuant to 11 U.S.C. §§ 547 and 550, Plaintiff is entitled to avoidance  
13 of the Tritowne Preferential Transfer, and for judgment against the Sean, Tony, Ramin and Trifish in  
14 the amount of \$2,750,000, plus interest.

16 **EIGHTH CLAIM FOR RELIEF**

17 **(For Avoidance and Recovery of Trifish Preferential Transfers Pursuant to 11 U.S.C. §§ 547  
18 and 550)**

19 **(Against Sean, Tony, Ramin and Trifish)**

20 168. Plaintiff refers to and incorporates by reference, as though fully set forth herein, each  
21 of the foregoing allegations of this Complaint.

22 169. The Trifish Preferential Transfers were transfers of an interest of Namco in property,  
23 to or for the benefit of Trifish, Sean, Tony and Ramin, on account of an antecedent debt owed by  
24 Namco before such transfer was made.

25 170. The Trifish Preferential Transfers were made while Namco was insolvent.

26 171. Trifish, Sean, Tony and Ramin are each insiders within the meaning of 11 U.S.C. §  
27 101(31).

28 172. The Trifish Preferential Transfers were made within one year of the Petition Date.

173. The Trifish Preferential Transfers enabled Sean, Tony, Ramin and Trifish to receive more than they would receive if Namco's case were a case under Chapter 7 of the Bankruptcy Code, the transfer had not been made, and they received payment on the debt to the extent provided by the Bankruptcy Code.

Accordingly, pursuant to 11 U.S.C. §§ 547 and 550, Plaintiff is entitled to avoidance of the Tritowne Preferential Transfer, and for judgment against the Sean, Tony, Ramin and Trifish in the amount of \$1,160,000, plus interest

## **NINTH CLAIM FOR RELIEF**

**(For Avoidance and Recovery of Mousa Preferential Transfers Pursuant to 11 U.S.C. §§ 547 and 550)**

(Against Mousa)

174. Plaintiff refers to and incorporates by reference, as though fully set forth herein, each of the foregoing allegations of this Complaint.

175. The Mousa Preferential Transfers were transfers of an interest of Namco in property, to or for the benefit of Mousa, on account of an antecedent debt owed by Namco before such transfer was made.

176. The Mousa Preferential Transfers were made while Namco was insolvent.

177. Mousa is an insider within the meaning of 11 U.S.C. § 101(31).

178. The Mousa Preferential Transfers were made within one year of the Petition Date.

179. The Mousa Preferential Transfers enabled Mousa to receive more than they would receive if Namco's case were a case under Chapter 7 of the Bankruptcy Code, the transfer had not been made, and they received payment on the debt to the extent provided by the Bankruptcy Code.

Accordingly, pursuant to 11 U.S.C. §§ 547 and 550, Plaintiff is entitled to avoidance of the Tritowne Preferential Transfer, and for judgment against the Mousa in the amount of \$900,000, plus interest

Case 2:10-ap-02945-BR Doc 10-2 Filed 01/25/11 Entered 01/25/11 16:58:36 Desc

Case 2:10-ap-02945-BR First Amended Complaint Doc 7 Filed 01/17/11 Entered 01/17/11 15:59:00 Desc  
Main Document Page 33 of 44

1 **TENTH CLAIM FOR RELIEF**  
2

3 **(For Avoidance and Recovery of RPM Preferential Transfer Pursuant to 11 U.S.C. §§ 547 and  
550)**

4 **(Against Sean, Tony, Ramin and Trifish)**

5 180. Plaintiff refers to and incorporates by reference, as though fully set forth herein, each  
6 of the foregoing allegations of this Complaint.

7 181. The RPM Preferential Transfer was a transfer of an interest of Namco in property, to  
8 or for the benefit of Trifish, Sean, Tony and Ramin, on account of an antecedent debt owed by  
9 Namco before such transfer was made.

10 182. The RPM Preferential Transfer was made while Namco was insolvent.

11 183. Trifish, Sean, Tony and Ramin are each insiders within the meaning of 11 U.S.C. §  
12 101(31).

13 184. The RPM Preferential Transfer was made within one year of the Petition Date.

14 185. The RPM Preferential Transfer enabled Sean, Tony, Ramin and Trifish to receive  
15 more than they would receive if Namco's case were a case under Chapter 7 of the Bankruptcy Code,  
16 the transfer had not been made, and they received payment on the debt to the extent provided by the  
17 Bankruptcy Code.

18 186. Accordingly, pursuant to 11 U.S.C. §§ 547 and 550, Plaintiff is entitled to avoidance  
19 of the RPM Preferential Transfer, and for judgment against the Sean, Tony, Ramin and Trifish in the  
20 amount of \$15,800,000, plus interest.

22 **ELEVENTH CLAIM FOR RELIEF**  
23

24 **(For Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 544(b) and  
550 and California Civil Code §§ 3439.04, 3439.05 and 3439.07)**

25 **(Against All Defendants)**

26 187. Plaintiff refers to and incorporates by reference, as though fully set forth herein, each  
27 of the foregoing allegations of this Complaint.

1           188. Namco did not receive reasonably equivalent value in exchange for (a) the LA  
 2 Marriott Transfers; (b) the Flamingo Road Transfers; (c) the Sunset Springs Transfers; (d) the Nam 5  
 3 Transfers; (e) the DGADE Transfers; (f) the Mousa SP Transfers; (g) the Trifish SP Transfers; (h)  
 4 the Trisister SP Transfers; (i) the Wilshire Bundy Transfers; (j) the Tritowne Transfer; (k) the  
 5 Trigrove Transfer; (l) the Daniel Transfers; (m) the Benjamin Transfers; (n) the Malka Transfers; (o)  
 6 the Shirah Transfers; (p) the Helen Transfers; and (q) the Red Feathers Transfers (collectively, the  
 7 "Namvar Fraudulent Transfers").

8           189. At the times that Namco made each of the Namvar Fraudulent Transfers, it (i) was  
 9 engaged or was about to be engaged in a business or transaction for which the remaining assets of  
 10 Namco were unreasonably small in relation to the business or transaction, or (ii) intended to incur, or  
 11 reasonably should have believed that it would incur, debts beyond its ability to pay as they came  
 12 due.

13           190. The Namvar Fraudulent Transfers were made without receiving reasonably  
 14 equivalent value in exchange, and Namco was insolvent at the time of each transfer, in that at fair  
 15 valuations, the sum of its debts was greater than all of its assets.

16           191. As of the Petition Date, there was at least one creditor whose claim arose prior to  
 17 each of the Namvar Fraudulent Transfers.

18           192. Accordingly, the Namvar Fraudulent Transfers are avoidable, and should be avoided,  
 19 as fraudulent pursuant to 11 U.S.C. § 544(b) and Cal. Civil Code §§ 3439.04-05, and may be  
 20 recovered pursuant to 11 U.S.C. § 550 and Cal. Civil Code § 3439.07.

22           **TWELFTH CLAIM FOR RELIEF**

23           **(For Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 544(b) and  
 24 550 and California Civil Code §§ 3439.04, 3439.05 and 3439.07)**

25           **(Against Mousa)**

26           193. Plaintiff refers to and incorporates by reference, as though fully set forth herein, each  
 27 of the foregoing allegations of this Complaint.

28           194. At all times material hereto, Namco was a creditor of DGADE.

Case 2:10-ap-02945-BR Doc 10-2 Filed 01/25/11 Entered 01/25/11 16:58:36 Desc

Case 2:10-ap-02945-BR First Amended Complaint Doc 7 Filed 01/17/11 Page 35 of 41 Entered 01/17/11 15:59:00 Desc  
Main Document Page 35 of 44

1 195. DGADE did not receive reasonably equivalent value in exchange for the DGADE  
2 Fraudulent Transfers.

3 196. At the time that DGADE made each of the DGADE Fraudulent Transfers, it (i) was  
4 engaged or was about to be engaged in a business or transaction for which the remaining assets of  
5 Namco were unreasonably small in relation to the business or transaction, or (ii) intended to incur, or  
6 reasonably should have believed that it would incur, debts beyond its ability to pay as they came  
7 due.

8 197. The DGADE Fraudulent Transfers were made without receiving reasonably  
9 equivalent value in exchange, and Namco was insolvent at the time of each transfer, in that at fair  
10 valuations, the sum of its debts was greater than all of its assets.

11 198. Accordingly, the DGADE Fraudulent Transfers are avoidable, and should be avoided,  
12 as fraudulent pursuant to 11 U.S.C. § 544(b) and Cal. Civil Code §§ 3439.04-05, and may be  
13 recovered from Mousa pursuant to 11 U.S.C. § 550 and Cal. Civil Code § 3439.07.

14  
15 **THIRTEENTH CLAIM FOR RELIEF**

16 (For Constructive Trust)

17 (Against Tribun and Bunherst)

18 199. Plaintiff refers to and incorporates by reference, as though fully set forth herein, each  
20 of the foregoing allegations of this Complaint.

21 200. Through the Wilshire Bundy Ground Lease Purchase Transfers, Namco provided  
22 100% of the equity capital for the acquisition of the Wilshire Bundy Ground Lease. Title was  
23 distributed to Namvar family members as tenants in common: 67% to Bundy Dimes (Ezri and  
24 children), 15% to Tribun (Trifish) and 18% to Bunherst (DGADE, i.e., Mousa's children).

25 201. In authorizing Namco to provide such funding while distributing ownership to family  
26 members and children, Ezri and Tony breached their fiduciary duties to Namco, and Sean, Mousa  
27 and Ramin aided and abetted such violation of his fiduciary duty.

202. Tribun and Bunkerst, and the Namvar Brothers through their ownership of Tribun and Bunkerst, have benefited from and been unjustly enriched by this wrongful conduct, in that they are in possession of the property on which the Namco funds were expended – the Wilshire Bundy Ground Lease, which has appreciated in value since its acquisition.

203. Tribun, Bunherst and the Namvar Brothers would be unjustly enriched by the retention of their interests in the Wilshire Bundy Ground Lease.

204. To avoid unjust enrichment and prevent the Namvar Brothers from deriving profits from their violations of fiduciary obligations and substantial participation therein, the Court should deem that the tenants-in-common ownership interests of Tribun and Bunherst in the Wilshire Bundy Ground Lease are held in constructive trust for the benefit of Plaintiff.

**FOURTEENTH CLAIM FOR RELIEF**

**(For Avoidance and Recovery of Fraudulent Transfers Pursuant to 11 U.S.C. §§ 544(b) and  
550 and California Civil Code §§ 3439.04, 3439.05 and 3439.07)**

(Against Baron Shabatian)

205. Plaintiff refers to and incorporates by reference, as though fully set forth herein, each of the foregoing allegations of this Complaint.

206. Since in or around March 2002 Tony and his wife, Katayoun Namvar, have owned real property commonly known as 129 S. Rockingham Avenue, Los Angeles, California 90049 (“Rockingham Property”).

207. The legal description of the Rockingham Property is:

Those portions of Block 31 of Brentwood Park, in the City of Brentwood, County of Los Angeles, State of California, as per map recorded in Book 9, Page 10 of Maps, in the office of the County Recorder of said County, and of Lot 143 of said Tract, and of Canon Drive, now vacated, and of Lot 3 of Tract No. 4098, recorded in Book 63, Page 95 of Maps, records of said County, described as a whole as follows:

Beginning at a point in the East line of said Lot 3, distant Southerly thereon 98.71 feet from the Northeast corner of said Lot; thence Westerly in a direct line, 279.35 feet to a point in the West line of said Lot 3; distant Southerly thereon 96.10 feet from the Northwest corner of said Lot; thence Southerly along said West line and prolongation thereof, 141.19 feet to a 2 inch iron pipe shown on said Tract No. 4098, as an angle point in the West line of Lot 24 of said Block 31; thence Southerly in a direct line 57.40 feet to the Northwest corner of Lot 1 of

Case 2:10-ap-02945-BR Doc 10-2 Filed 01/25/11 Entered 01/25/11 16:58:36 Desc

Case 2:10-ap-02945-BR Doc 7 Filed 01/11/11 Entered 01/11/11 15:59:00 Desc  
First Amended Complaint Page 37 of 41  
Main Document Page 37 of 44

1 Tract No. 4097, recorded in Book 64, Page 46 of said map Records; thence Easterly 299.08  
 2 feet along the North line of said Lot 1, to the Northeast corner of said Lot; thence Northerly  
 3 84.12 feet, more or less, along Rockingham Avenue, 75 feet wide, to the point of beginning.

4 Assessor's Parcel Number: 4406-015-008

5 208. On information and belief, on or about October 1, 2008, Tony and his wife, Katayoun  
 6 Namvar, executed a promissory note in the principal sum of \$5,050,000.00 in favor of Haron  
 7 Shabatian ("Shabatian" and the "Shabatian Note") and, concurrently, recorded as Instrument  
 8 Number 20081760761 in the official records of the Office of the County Recorder of Los Angeles  
 9 County, California a purported Deed of Trust in favor of Shabatian (the "Shabatian Deed") securing  
 obligations under the Shabatian Note.

10 209. Tony and Katayoun Namvar did not receive reasonably equivalent value in exchange  
 11 for the Shabatian Note and Shabatian Deed of Trust.

12 210. At the time that Tony and Katayoun Namvar executed the Shabatian Note and gave  
 13 the Shabatian Trust Deed, they (i) were engaged or were about to be engaged in a business or  
 14 transaction for which their remaining assets were unreasonably small in relation to the business or  
 15 transaction, or (ii) intended to incur, or reasonably should have believed that it would incur, debts  
 16 beyond their ability to pay as they came due.

17 211. The Shabatian Note was executed and the Shabatian Trust Deed given without  
 18 receiving reasonably equivalent value in exchange, and Tony and Katayoun Namvar were insolvent  
 19 at the time of each transfer, in that at fair valuations, the sum of their debts was greater than all of  
 20 their assets.

21 212. On information and belief, the Shabatian Note was executed and the Shabatian Deed  
 22 was placed on the Rockingham Property by Tony and Katayoun Namvar with the actual intent to  
 23 hinder, delay or defraud their then and future creditors, including Plaintiff, in the collection of their  
 24 debts and claims. Plaintiff has been damaged by the fraudulent Shabatian Deed that was placed on  
 25 the Rockingham Property in that the fraudulent lien purports to create a senior secured obligation  
 26 that would take priority over any judgment or execution lien awarded to Plaintiff in this action, that  
 27 might be levied upon in order to partially satisfy the judgment to be awarded herein.

28

213. Accordingly, the Shabatian Note and Shabatian Trust Deed are avoidable, and should be avoided, as fraudulent pursuant to 11 U.S.C. § 544(b) and Cal. Civil Code §§ 3439.04-05, and may be recovered from Shabatian pursuant to 11 U.S.C. § 550 and Cal. Civil Code § 3439.07.

## **FIFTEENTH CLAIM FOR RELIEF**

**(Declaratory Relief)**

**(Against All Defendants)**

214. Plaintiff refers to and incorporates by reference, as though fully set forth herein, each of the foregoing allegations of this Complaint.

215. An actual, present and justiciable controversy has arisen between Plaintiff and Defendants, in that Plaintiff alleges that the recipients of each of the Namvar Fraudulent Transfers hold the property received thereby, and all proceeds of such property, in constructive trust for the benefit of the Plaintiff, and that Plaintiff is entitled to title and possession of all such property. On information and belief, Defendants disagree.

216. Plaintiff seeks a declaratory judgment that Plaintiff is entitled to possession and title to all property transferred in the Namvar Fraudulent Transfers, and all proceeds of such property.

## **SIXTEENTH CLAIM FOR RELIEF**

### **(Equitable Subordination)**

**(Against the Namvar Defendants and LLC Defendants)**

217. Plaintiff refers to and incorporates by reference, as though fully set forth herein, each of the foregoing allegations of this Complaint.

218. Certain of the Namvar Defendants, and/or LLC Defendants in which any of them may claim a membership interest, have asserted or may assert claims against Namco, seeking an affirmative recovery or for purposes of establishing a right to offset.

219. In engaging in the conduct alleged herein, the Namvar Brothers engaged in inequitable conduct.

220. The Namvar Defendants' inequitable conduct injured creditors and/or conferred an unfair advantage upon them.

221. Subordination of any claims of the Namvar Defendants and/or any LLC Defendants in which they claim a membership interest to all other claims would not be inconsistent with the Bankruptcy Code.

**OBJECTION TO CLAIMS**

**(Against all Defendant/Claimants)**

222. Plaintiff refers to and incorporates by reference, as though fully set forth herein, each of the foregoing allegations of this Complaint.

223. Defendants are entities from which property is recoverable under sections 542, 550 or 553 of the Bankruptcy Code, and/or are transferees of transfers avoidable under section 544, 547 or 548 of the Bankruptcy Code.

224. Under section 502(d) of the Bankruptcy Code, any claim asserted in this case by any such entity or transferee shall be disallowed unless such person or entity or transferee has paid the amount or turned over any such property for which such entity or transferee is liable under sections 542, 550 or 553 of the Bankruptcy Code.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment on the Complaint as follows:

1. On the First and Second Claims for Relief, for compensatory and punitive damages, in an amount to be established at trial.

2. On the Third, Fourth and Fifth Claims for Relief, for compensatory damages in the amounts alleged or to be established at trial, and for interest at 8% to the date of judgment.

3. On the Sixth Claim for Relief, for an order avoiding and setting aside the Trigrove Preferential Transfer and awarding Plaintiff judgment against Trifish, Sean, Tony and Ramin in the amount of \$3,500,000.

Case 2:10-ap-02945-BR Doc 10-2 Filed 01/25/11 Entered 01/25/11 16:58:36 Desc

Case 2:10-ap-02945-BR First Amended Complaint Doc 7 Filed 01/17/11 Entered 01/17/11 15:59:00 Desc

Main Document Page 40 of 44

1           4.     On the Seventh Claim for Relief, for an order avoiding and setting aside the Tritowne  
2 Preferential Transfer and awarding Plaintiff judgment against Trifish, Sean, Tony and Ramin in the  
3 amount of \$2,750,000.

4           5.     On the Eighth Claim for Relief, for an order avoiding and setting aside the Trifish  
5 Preferential Transfer and awarding Plaintiff judgment against Trifish, Sean, Tony and Ramin in the  
6 amount of \$620,000.

7           6.     On the Ninth Claim for Relief, for an order avoiding and setting aside the Mousa  
8 Preferential Transfers and awarding Plaintiff judgment against Mousa in the amount of \$775,000.

9           7.     On the Tenth Claim for Relief, for an order avoiding and setting aside the RPM  
10 Preferential Transfer and awarding Plaintiff judgment against Trifish, Sean, Tony and Ramin in the  
11 amount of \$15,800,000.

12           8.     On the Eleventh Claim for Relief, avoiding the Namvar Fraudulent Transfers and  
13 awarding judgment to Plaintiff in an amount to be proven at trial.

14           9.     On the Twelfth Claim for Relief, avoiding the DGADE Fraudulent Transfers and  
15 awarding judgment to Plaintiff in an amount to be proven at trial.

16           10.    On the Thirteenth Claim for Relief, for judgment imposing a constructive trust upon  
17 the Wilshire Bundy Ground Lease, for the benefit of Plaintiff.

18           11.    On the Fourteenth Claim for Relief, for a judgment avoiding and setting aside the  
19 Shabatian Deed and awarding Plaintiff judgment against Shabatian in the amount of \$5,050,000.

20           12.    On the Fifteenth Claim for Relief, for a declaratory judgment that Plaintiff is entitled  
21 to possession and title to all property transferred in the Namvar Fraudulent Transfers, and all  
22 proceeds of such property.

23           13.    On the Sixteenth Claim for Relief, for judgment subordinating any claim of the  
24 Namvar Defendants and any entity in which any of the Namvar Defendants have an ownership  
25 interest, to the claims of any other creditor in these cases.

26           14.    On the First, Second, Fifth, and Eleventh through Fifteenth Claims for Relief, for  
27 injunctive relief enjoining the transfer, hypothecation or alienation of any property or proceeds of  
28

Case 2:10-ap-02945-BR Doc 10-2 Filed 01/25/11 Entered 01/25/11 16:58:36 Desc

Case 2:10-ap-02945-BR First Amended Complaint DOC 7 Filed 01/11/11 Entered 01/11/11 15:59:00 Desc

Main Document Page 41 of 44

1 property obtained through the breaches of fiduciary duty or Namvar Fraudulent Transfers alleged  
2 herein.

3 15. On the Objection to Claims, for an order disallowing pursuant to section 502(d) of the  
4 Bankruptcy Code the claim of any entity or transferee that is liable under sections 542, 550 or 553 of  
5 the Bankruptcy Code, unless such entity or transferee has paid the amount or turned over any such  
6 property for which such entity or transferee is liable.

7 16. On all claims, for Plaintiffs' costs of suit.

8 17. For such other and further relief as the Court may deem appropriate.

10 Dated: January 11, 2011

PACHULSKI STANG ZIEHL & JONES LLP

11 By /s/ Dean A. Ziehl  
12 Richard M. Pachulski  
13 Dean A. Ziehl  
14 Alan J. Kornfeld  
15 Gillian N. Brown

16 Special Counsel for Bradley D. Sharp,  
17 Chapter 11 Trustee for Estate of Namco  
18 Capital Group, Inc.

PACHULSKI STANG ZIEHL & JONES LLP  
ATTORNEYS AT LAW  
LOS ANGELES, CALIFORNIA